

JODY A. LANDRY, Bar No. 125743  
[jlandry@littler.com](mailto:jlandry@littler.com)  
LINDSEY M. STEVENS, Bar No. 265700  
[lstevens@littler.com](mailto:lstevens@littler.com)  
LITTLER MENDELSON, P.C.  
501 W. Broadway, Suite 900  
San Diego, California 92101.3577  
Telephone: 619.232.0441/ Fax: 619.232.4302

Attorneys for Defendant  
ECOLAB INC.

STEVEN G. ZIEFF (SBN 84222)  
DAVID A. LOWE (SBN 178811)  
JOHN T. MULLAN (SBN 221149)  
RUDY EXELROD ZIEFF & LOWE LLP  
351 California Street, Suite 700  
San Francisco, CA 94104  
Telephone: (415) 434-9800 / Fax (415) 434-0513  
[sgz@rezlaw.com](mailto:sgz@rezlaw.com)  
[dal@rezlaw.com](mailto:dal@rezlaw.com)  
[jtm@rezlaw.com](mailto:jtm@rezlaw.com)

TODD JACKSON (SBN 202598)  
LEWIS, FEINBERG, LEE, RENAKER  
& JACKSON, P.C.  
476 9th Street  
Oakland, CA 94607  
Telephone: (510) 839-6824 / Fax (519) 839-7839

*COUNSEL FOR PLAINTIFF CONTINUED  
ON FOLLOWING PAGE*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA,  
OAKLAND/SAN FRANCISCO DIVISION

NICK CANCELLA, on behalf of himself  
and all others similarly situated,

Plaintiffs,

v.

ECOLAB INC., a corporation,

Defendant.

Case No. CV 12 3001 CRB

**STIPULATION AND  
[REDACTED] ORDER REGARDING  
TOLLING OF FLSA STATUTE OF  
LIMITATIONS**

District Judge: Hon. Charles R. Breyer  
Ct. 6

Complaint Filed: June 11, 2012  
Trial Date: Not Set

STIPULATION RE  
TOLLING

Case No. CV-12-3001 CRB

1 JAMES M. FINBERG (SBN 114850)  
2 ALTSHULER BERZON LLP  
3 177 Post Street, Suite 300  
4 San Francisco, CA 94108  
5 Telephone: (415) 421-7151  
6 Facsimile: (415) 362-8064

7 ROBERT S. NELSON (SBN 220984)  
8 NELSON LAW GROUP  
9 26 West Portal Avenue, Suite 1  
10 San Francisco, CA 94127  
11 Telephone: (415) 702-9869  
12 Facsimile: (415) 592-8671  
13 [rmelson@nelsonlawgroup.com](mailto:rmelson@nelsonlawgroup.com)

14 Attorneys for Plaintiff  
15 NICK CANCELLA, on behalf of himself  
16 and all others similarly situated  
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1 This Stipulation is entered into by and between Plaintiff NICK CANCELLA ("Plaintiff") and  
 2 Defendant ECOLAB INC. ("Ecolab" or "Defendant") by and through their undersigned counsel.  
 3 Plaintiff and Ecolab are collectively referred to herein as the "Parties."

#### 4 RECITALS

5 WHEREAS, on June 11, 2012, Plaintiff filed an action in the United States District Court for  
 6 the Northern District of California styled Cancilla v. Ecolab, Inc., Case No. CV 12 3001 CRB;

7 WHEREAS, Plaintiff claims, among other things, that Ecolab has misclassified Plaintiff as  
 8 exempt from overtime requirements under the Fair Labor Standards Act ("FLSA") and, as a result,  
 9 has not provided overtime compensation for overtime hours worked ("FLSA Claims");

10 WHEREAS, Plaintiff seeks to bring a nationwide FLSA collective action on behalf of all  
 11 persons who are employed, or have been employed during the relevant time period, in the Service  
 12 Specialist and Service Specialist Trainee positions who were, are, or will be classified by Ecolab as  
 13 exempt from overtime pay under federal law" ("Prospective FLSA Collective Action");

14 WHEREAS, Ecolab denies that it has misclassified as exempt Plaintiff or other employees or  
 15 engaged in any other unlawful employment practices and further denies that certification of any  
 16 potential collective action is appropriate and further alleges that it classified Service Specialists  
 17 Trainees as non exempt;

18 WHEREAS, the Parties have agreed that before Plaintiff moves to certify the above-  
 19 referenced collective actions, the parties will explore the issue of whether Defendant's FLSA Section  
 20 7(i) affirmative defense is appropriate for summary judgment/adjudication;

21 WHEREAS, in order to facilitate the Parties' determination as to whether Defendant's FLSA  
 22 Section 7(i) affirmative defense is appropriate for summary judgment/adjudication, and in order to  
 23 facilitate any such motions, the Parties have also agreed to prioritize discovery related to the FLSA  
 24 Section 7(i) exemption;

25 WHEREAS, the Parties have agreed that cross-motions for summary judgment will be filed  
 26 on January 15, 2013 and that , Plaintiff will move for conditional certification of the Prospective  
 27 FLSA Collective Action and for issuance of Court-facilitated *Hoffmann-LaRoche* notice ("Notice  
 28

Motion”) within 60 days of the Court ruling on the Parties’ motions for summary judgment/adjudication;

THEREFORE, the Parties stipulate and agree as follows:

**STIPULATION AND AGREEMENT**

1. Plaintiff will not file a Notice Motion until after the Court has ruled on any summary judgment/adjudication as to the FLSA Section 7(i) exemption, and will file such Notice Motion within 60 days of the Court ruling on any summary judgment/adjudication as to the FLSA Section 7(i) exemption. In the event that neither Party has filed a summary judgment/adjudication as to the FLSA Section 7(i) exemption by January 15, 2013, Plaintiff will file a Notice Motion within 60 days of January 15, 2013 (that is, by March 16, 2013).

2. The statute of limitations under the FLSA applicable to Ecolab employees in Service Specialist positions shall be tolled from October 12, 2012 through 60 days after the date the Court rules on the motion(s) for summary judgment on 7(i). If the Court grants conditional certification, notice goes out and a Service Specialist does not opt in to this matter within the time required by the notice, then this tolling agreement is not applicable to said individual. If the Court rules that section 7(i) is applicable to the Service Specialists then the tolling agreement as to the FLSA statute of limitation shall cease immediately.

3. This Stipulation and Order is without prejudice to Plaintiff moving the Court, pursuant to the doctrine of equitable tolling, to toll the FLSA statute of limitations for periods before October 12, 2012 or for the time period after tolling ceases pursuant to the provisions in paragraph 2. Ecolab reserves the right to oppose any such motion. This Stipulation and Order is also without prejudice to the Parties reaching any agreement about additional tolling.

4. This Stipulation and Order will not have the effect of reviving any claims that were time-barred as of October 12, 2012.

5. This Stipulation and Order shall not be admissible for any purpose whatsoever, other than for the purpose of enforcing the terms hereof, in any proceeding between Ecolab and the Plaintiff and/or other individuals for whom the FLSA statute of limitations is tolled pursuant to this Stipulation and Order.

1           6.       This Stipulation and Order is not intended as, and shall not be construed to be,  
2 an admission by any party that any other party has or does not have a valid claim or defense.

3           7.       This Stipulation and Order shall not become effective until approved and  
4 entered by the Court.

5  
6           IT IS SO STIPULATED.

7  
8           Dated: November 1, 2012

9                               /s/ Jody A. Landry

10                              JODY A. LANDRY  
11                              LINDSEY M. STEVENS  
12                              LITTLER MENDELSON, P.C.  
13                              Attorneys for Defendant  
14                              ECOLAB INC.

15  
16           Dated: November 1, 2012

17                              /s/ John T. Mullan

18                              STEVEN G. ZIEFF  
19                              DAVID A. LOWE  
20                              JOHN T. MULLAN  
21                              RUDY EXELROD ZIEFF & LOWE LLP  
22                              Attorneys for Plaintiff  
23                              NICK CANCELLA

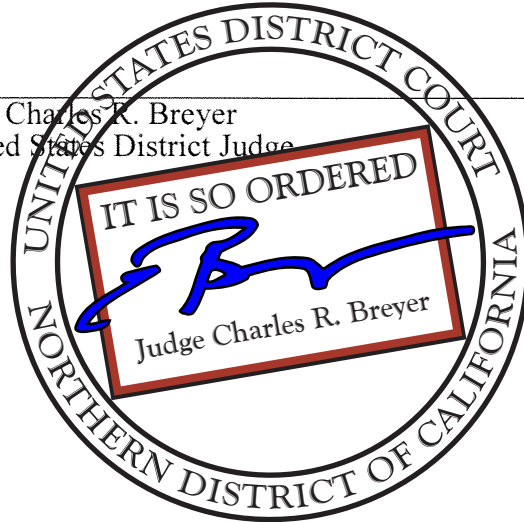
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ORDER

The foregoing Stipulation is approved, and IT IS SO ORDERED.

DATED: Nov. 15, 2012

Hon. Charles R. Breyer  
United States District Judge



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STIPULATION RE  
TOLLING